

Panaji, 15th June, 1989 (Jyaistha 25, 1911)

SERIES II No. 11

OFFICIAL GAZETTE



GOVERNMENT OF GOA

GOVERNMENT OF GOA

Home (General) Department

Order

No. 13/3/84-HD (G)

In exercise of the powers conferred by sub-section (3) of section 3 of the National Security Act, 1980 (Central Act 65 of 1980), the Government of Goa being satisfied having regard to the circumstances likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate, North Goa District, Panaji and District Magistrate, South Goa District, Margao, that it is necessary so to do hereby directs that the said District Magistrates may also if satisfied as provided in sub-section (2) of section 3 of the said Act, exercise the powers conferred by the said sub-section within the local limits of their jurisdiction for a period of three months from the date of issue of this order.

By order and in the name of the Governor of Goa.

A. T. Kamat, Under Secretary (Home).

Panaji, 5th June, 1989.

Education Department

Order

No. 15/1/88-EDN (Part file) I

Miss Ratna Joythi D. is hereby temporarily appointed as lecturer in Goa College of Home Science, Bambolim-Goa on a consolidated pay of Rs. 2000/- per month with effect from 26-1-89 to 19-3-89 and on ad-hoc basis in regular time scale of Rs. 2200-4000/- plus the usual allowances admissible from time to time with initial pay of Rs. 2200/- per month from 20-3-89 to 19-7-89 or till the vacancy is filled up on regular basis whichever is earlier.

The above appointment is subject to the condition specified vide Memorandum of even number dated 19-1-89.

This issues in supersession of earlier Government order No. 15/1/88-EDN (part file) I dated 25-4-89.

By order and in the name of the Governor of Goa.

D. N. Accawade, Under Secretary (Education).

Panaji, 7th June, 1989.

Forest Department

Order

No. 10/19/83/FOR

Whereas an Agreement for collecting cashew apples and nuts of departmental cashew plantation block numbers A,

B, C, D and E situated at Bhatimol of Saulimolla, Sanguem, Goa was entered between the President of India (hereinafter called the Government) and Shri Damodar G. Naik, son of Shri Ganesh Naik aged 50 years, resident of Saulimolla, Sanguem on 17-1-1985 (hereinafter called the "said Agreement");

And whereas in terms of clause 21 of the said Agreement any question, dispute or difference arising under or out of or in connection with the meaning or operation of and as to the rights, liabilities of the parties thereto, is required to be referred to the sole arbitration of the person nominated by the Government of Goa;

And whereas a dispute has arisen regarding the contract sum payable under the said Agreement (hereinafter called the "said dispute");

And whereas the civil suit No. 7/85 in respect of the said dispute has been filed by Shri D. G. Naik in the Court of the District Judge South Goa, Margao (hereinafter called the "said court");

And whereas in pursuance of the prayers of the Government, the said court has stayed the proceedings instituted by Shri Damodar G. Naik under Civil suit No. 70/85 and directed the Government to appoint an Arbitrator in terms of clause 21 of the said Agreement.

And whereas vide Order of even number dated 12-2-1987 Shri B. S. Subbanna was appointed as a sole arbitrator in term of clause 21 of the said Agreement for referring the said dispute;

And whereas Shri B. S. Subbanna has expressed his inability to act as a sole arbitrator under clause 21 of the said Agreement.

Now, therefore, in pursuance of clause 21 of the said Agreement and in supersession of the Government Order of even number dated 12-2-1987, the Government of Goa hereby appoints Shri P. V. Kadnekar, Under Secretary (Drafting) to the Government of Goa, as a sole arbitrator for referring the said dispute as provided under the said Agreement.

By order and in the name of the Governor of Goa.

A. T. Fernandes, Under Secretary to the Govt. of Goa (Forest Department).

Panaji, 17th May, 1989.

Public Health Department

Order

No. 8/138/87-II/PHD

Read: Government order No. 8/138/87-II/PHD dated 6-12-1988.

The ad-hoc appointment of Dr. Kishor V. Nagvenkar to the post of Demonstrator in Microbiology in Goa Medical College is extended by six months or till the post is filled on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Health).

Panaji, 2nd June, 1989.

Order

No. 8/37/88-II/PHD

Read: Government order No. 8/37/88-II/PHD dated 5-12-88.

The ad-hoc appointment of Dr. Padmanabh V. Rataboli to the post of Demonstrator in Pharmacology in Goa Medical College is extended by six months or till the post is filled on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Health).

Panaji, 5th June, 1989.

Order

No. 8/38/88-II/PHD

Read: Government order No. 8/38/88-II/PHD dated 5-12-1988.

The ad-hoc appointment of Dr. M. V. Mallya, to the post of Lecturer in Pathology, in Goa Medical College is extended by six months or till the post is filled on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Health).

Panaji, 5th June, 1989.

Department of Labour

Order

No. 28/2/88-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Labour).

Panaji, 23rd May, 1989.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/23/79

Shri Pradeep Sardessai. — Workman

V/s

M/s Goa Bottling Co. Pvt. Ltd. — Employer

Shri K. V. Nadkarni is representing the Workman.

Shri P. K. Lele is representing the Employer.

Panaji, Dated: 19-4-1989.

A W A R D

This is a reference made by the Govt. of Goa, by its order No. IRM/CON/(95)/78 dated 11th June, 1979 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s Goa Bottling Co. Pvt. Ltd., Margao in retrenching the services of Shri Pradeep Sardessai, Clerk, w. c. f. 16-5-1978 is legal and justified?

If the answer be in the negative, to what relief if any, is the aforementioned workman entitled to?"

After the above Govt. reference was received the matter was registered and notices were issued to the parties. The

workman filed his claim statement on 29th October, 1979 wherein he states that initially he joined the services of the Party II, Company as a trainee clerk on 5-4-74 and after 3 months service he was confirmed on 1st July, 1974. While he continued his service as a clerk up to May, 1978 the management by retrenchment order dated 16-5-78 retrenched him from the service for apparently no good reason. According to him the management had no occasion to complain about his ability and sincerity at any time during the tenure of his service. According to him he was an active member of the union and the member of the committee formed by the Union and he feels that the management had bias towards him on account of his union activities. According to him, by a letter dated 9th Nov., 1977 he was transferred and asked to work in the Sales Department of the establishment and was asked to perform the duties of the Sales Supervisor. However, his designation as such was not changed from clerk to Sales Supervisor.

Thereafter the Union filed a charter of demands and while the discussion and conciliation proceedings on the charter of demands were going on the management started harassing the workers with the intention of breaking their unity and to coerce them into submission which the workmen resisted. In continuation in the process of harassment the management gave a letter to the workman on 11th May, '78 in which a tour programme of Ratnagiri District for the so called sales survey was enclosed and the tour started at 7.00 a.m. next day i.e. 12-5-78 and was to conclude on 26-5-78. The workman felt that no time was given to him to make preparations and hence he declined to go on the scheduled tour. By a letter dt. 12-5-78 the management asked the workman to give his explanation for not going on the trip within 48 hours failing which disciplinary action would follow. Thereafter the workman was put under suspension and simultaneously notice-cum-chargesheet was served on him. The workman gave a reply to the chargesheet stating how he was unable to join the tour and there was no act of indiscipline but on the contrary the action of the management was pre-planned and smacked of victimisation. The management without going into the merits of the reply issued an order dated 16th May, 1978 retrenching the workman from service with immediate effect. According to the workman this order amounts to dismissal and is an act of illegal termination of service. Thereafter the workman raised the industrial dispute and after the failure of the conciliation proceedings the Govt. made the above reference to this tribunal. The workman claims reinstatement with full back wages alleging that the order of retrenchment is nothing less than an order of termination simpliciter.

In their written statement dated 10th December, 1979 the management have admitted that the workman joined as a clerk in July, 1974 but from that time onwards the behaviour of the workman was not found to be satisfactory and he was adopting a non-cooperative attitude towards other colleagues. As repeated complaints were received against the workman he was transferred to General Administration Section hoping that he would show some improvement. However, the workman did not improve nor did he change his attitude and it was found that he was not suitable for table work. Hence in order to find out whether he would be suitable for out door duties the workman was transferred to Sales Section from 9th Nov., 1977. Even in that department the management noticed that the work was not up to the mark and he was found to be surplus to their requirements. While this was the position in May, '78 there arose a necessity to take a sales survey of Ratnagiri District and the management decided to put the workman on this job just to give him a trial and to see whether he would be absorbed in that line. The Sales Manager orally informed the workman on 2nd or 3rd May, '78 that he should be ready for a 2 weeks tour to Ratnagiri District for the purpose of survey. The workman did not show any disinclination to go on tour then. Thereafter a formal order was issued on 11th May, 1978 and when the letter of the tour programme was taken to the workman he refused to accept the letter. The workman accepted the letter next day i.e. 12th May, 1978. After receiving the letter the workman refused to carry out the order under which he was supposed to go on tour to Ratnagiri. Consequently, show cause notice was issued to him on the very day and the management found that the explanation given by the workman indicated that he did not want to avail of the assignment giving him an opportunity. The refusal of the workman indicated that the workman could no longer be accommodated in any department and no purpose would be served by pursuing the matter of show cause notice. The workman was the junior most employee in the category of clerks and hence the letter dated 16th May, 1979 retrenching the workman was issued to him. The workman refused to accept the retrenchment

compensation and other dues offered to him as per the letter of retrenchment. In spite of this the management sent all dues to the workman along with a letter dated 24th May, 1978. Along with it a detailed statement of account was also sent. The workman refused to accept the payment sent to him along with the letter. About the allegation about union activities the management claims that it was not aware of the activities of the workman and the role played by him in the union. According to the management the order of retrenchment is a bonafide one and has been adhered to as the workman was found to be surplus and there was no case of any victimisation.

The workman thereafter filed his rejoinder on 15th Jan., 1980 reiterating that he was working efficiently and the management was convinced of his efficiency and the work after his transfer to the Sales Department, was carried out by him with greater responsibility and skill. About the allegation that he refused the letter dated 11th May, '78 he denies the same stating that the communication was received by him on 12-5-78 the day on which the tour was to start. He reiterates that the termination of his services is illegal and wrongful.

With these rival contentions my Predecessor framed the following issues on 18-6-80.

ISSUES

1. Do the Employer/Party II prove that they are justified in retrenching the Workman/Party I?
2. Does the Workman/Party I prove that the termination of his services amounts to dismissal or illegal termination and is mala fide and intended to victimize him for his Trade Union activities?
3. Does the Workman/Party I prove that he is entitled to reinstatement with full back wages and continuity of service?

The main point for consideration in the three issues is whether the employer was justified in retrenching the workman and whether the provisions of Sec. 25F of the I.D.A., relating to retrenchment are duly and properly followed by the management. It appears that during the trial a point was raised about the representation of the workman by Shri K. V. Nadkarni, Labour Consultant. My Predecessor by his speaking order dated 13-5-83 over ruled the objection of the management and permitted Shri Nadkarni to represent the workman while the management was represented by the Labour Consultant, Shri P. K. Lele.

During the trial the evidence was partly recorded before my Predecessor. The evidence of the management mainly consists of Admn. Manager of the Company by name D. R. Borkar who has been extensively cross examined on behalf of the workman. He has produced a number of documents during the course of his evidence and his evidence is the main evidence so far as the charge of inefficiency and unsuitability levelled against the workman is concerned. In addition to the evidence of Borkar the management has examined one Vishwanath Nagarsekar on 16-1-1989 showing that the workman after his retrenchment by the Bottling Company joined the service of M/s R. D. Mauzo & Sons at Margao where he worked between 1981 to 1986. He has also produced the pay sheets showing that the workman had worked there. It has to be noted that the evidence of the Admn. Manager, Borkar which commenced before my Predecessor on 3-8-83 concluded before me with the cross examination on 28th December, 1987. The management closed its evidence on 16-6-1988 and on 27-6-1988 when the matter was adjourned for the evidence of the workman the Court was informed that the workman did not wish to lead any evidence. Thereafter another witness was examined by the management by name Vinod Gosalia as well as Vishwanath Nagarsekar is led by the management to prove that the workman is gainfully employed else where after his removal from the service on account of retrenchment.

The matter was argued over with the available evidence on record. The question was as regards the workman having an employment elsewhere was brought on record even through application and the workman has conceded to the position that he took up a service elsewhere after his retrenchment by the management of Party II. In view of this position and in the absence of the statement of the workman about the charge of inefficiency and he having rendered surplus the evidence of management have to be considered to see whether the management was justified in terminating the services of the workman which according to the management is just an order of retrenchment, in the

given circumstances. As a matter of fact issue no. 1 framed by my Predecessor pertains to this aspect only and I shall go on scanning the evidence to see whether the management of Party II was justified in retrenching the workman.

Obviously, the main evidence of the employer consists of the evidence of the then Adm. Manager by name D. R. Borkar, the recording of whose evidence commenced on 3-8-1983 and ended before me on 28th December, 1987, the deposition running into 28 pages. All small and big matters are put up in the cross examination but the main case of the management is that the workman was non cooperative and was not behaving properly with co-workers for which complaints in writing were received and such complaints are produced at Exb. M-2, M-3. Along with this, there is the main contention of the management namely that the workman who was shifted to the Sales Department was given an assignment of conducting a market survey at Ratnagiri, the programme for which was fixed between 12-5-78 to 27-5-78. The letter Exb. M-8 was issued to the workman on 11-5-1978 at 5.00 p.m. and the workman allegedly refused to accept the letter containing the tour programme. The workman was issued with the letter over again which he received next day i.e. on 12-5-78 the day on which the tour programme was to begin. The workman refused to go on tour on the spacious ground that he had hardly any time to make preparations for the tour. The Admn. Manager states in this regard on oath that the workman was orally informed about the fixation of the tour on 2nd or 3rd May and the letter was issued more or less as a formality. It seems that due to this refusal the relations between the workman and the management got strained. They felt that the refusal amounted to disobedience of lawful orders and show cause notice was issued to which the workman gave a reply Exb. M-9. The management thought over the matter as to whether a departmental enquiry should be held or whether the workman should be retrenched. The Labour Advisor, Shri K. V. Nadkarni advised retrenchment. Hence, the letter of retrenchment dated 16th May, 1978 Exb. M-10 was issued. The workman received it on 18-5-78. The workman was advised to collect his legal dues. The management on legal advice sent another letter dated 24th May, 1978 (Exb. M-3 colly). This letter was accompanied by a statement of account and by a cheque for the payment of dues including the salary upto 18th May, 1978. The cheque was for Rs. 1703.76 Additionally, the cheque for Rs. 377 which was sent earlier was also sent. The workman was retrenched as per the report Exb. M-15 under which three Clerks, one Mechanic, one Syrup male and female Chemist were found surplus. The workman Sardesai was the junior most amongst the Clerical staff and he was retrenched on the basis of the principle of "Last come first go". The seniority list was exhibited on the notice board on 13th May, 1978 and the name of the workman Sardesai appears as the last person. The list is produced at Exb. M-17. This is the sum and substance of the evidence of the Admn. Manager in Examination in chief.

He has been extensively cross examined. The cross examination pertains to the length of service biodata etc., of the workman Sardesai. He is then questioned about Exb. 9 in which the workman had given reasons for not going to Ratnagiri. There is then the cross examination regarding the complaints regarding the attitude of the workman towards his co-workers, a fact with which we are not directly concerned in this matter of retrenchment.

In the cross examination before me he admits that the letter Exb. M-13 was sent to the workman on 24-5-1978. However he states that the notice of retrenchment was displayed on the board together with seniority list, on 13-5-1978, three days before the retrenchment. This is all which is to be seen in the cross examination. Additionally, the management have led the evidence of Vishwanath Nagarsekar whose evidence shows that the workman P. Sardesai worked with M/s. R. D. Mauzo & Sons between 1981 to 1982. There is then the evidence of Vinod Gosalia who says that the workman Pradeep Sardesai worked with him in 1987. It is admitted by Shri K. V. Nadkarni who has incidentally worked as a Labour Advisor for Party II and who is now appearing for the workman as a Labour Consultant that the workman took a service elsewhere and he is gainfully employed elsewhere. It has to be noted here pertinently that the workman has not shown any interest in the proceedings as the roznama shows that he is all along absent excepting for one or two occasions. Further, against the positive statement of the management there is no statement of the workman on oath and for reasons best known to himself the workman has not entered the witness box. It would have been of immense help to the proceedings had the workman come and stated why he refused to go on tour to Ratnagiri

and why he did not go to the office for work until the order of retrenchment was served on him. When the legality or otherwise of the order of retrenchment is to be considered the say of the retrenched workman would be of material importance. The non examination of the workman is an important factor which the court has to consider while studying the different aspects of the order of retrenchment. It is submitted on behalf of the management that along with the letter of retrenchment all legitimate dues were sent to the workman. The Admn. Manager Borkar states that two cheques for Rs. 1,703.76 and Rs. 377 were sent along with the letter as retrenchment compensation. The workman received the cheques but did not encash for reasons known to him. As observed by the Gujarat High Court in which a Supreme Court Case is discussed reported in 1971 Vol. I L.L.J. page 41 that if all dues have been received by the workman as per the statement of account showing retrenchment compensation this is sufficient compliance with Sec. 25F of the I.D.A. For a valid retrenchment the following requirements have to be complied with.

- (a) one month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;
- (b) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months;

About the third requirement notice to appropriate Govt. the Supreme Court have held that the notice to Govt. postulated by clause 3 is not a condition precedent.

According to the legal opinion the essence of the matter is that compliance of these requirements should appear to be parts of a single transaction. When once the mandatory pre-conditions have been complied with the retrenchment cannot be challenged for non compliance of those conditions. This point is illustrated by the decision of a Div. Bench of the Patna High Court in the case of Parashuram Misra v/s Union of India reported in 1979 LAB. I. C. page 776. Reliance is placed by the management on another authority of Rajasthan High Court reported in 1981 LAB. I. C. page 696 wherein it is held that an offer to collect wages is sufficient compliance of Sec. 25F(2) of the Act. According to the management the workman was found to be surplus and the question of surplus workmen was agitating the mind of the management since 1975. Hence the decision to retrench was taken and the action is claimed to be justified and all legal dues were offered to the workman. The workman who seems to be gainfully employed elsewhere has evinced no interest in the proceedings by not entering the witness box to challenge the statements of the management. What the Govt. calls upon this Tribunal is to find out whether the action of the management in retrenching the services of the clerk Pradeep Sardesai is legal and justified. I have carefully gone through the entire evidence including the documents produced on record. There is no evidence whatsoever to show that the workman was an active member of the union and that this is a case of victimisation on account of union activities. On the contrary it appears that the refusal of the workman to go on tour of Ratnagiri from 12-5-78 onwards and thereafter not rejoining the services in the office where he was working has prompted the management to take the action against the workman. It appears that two options were open to the management namely to issue a show cause notice for

disobedience of lawful order or to resort to the spacious ground of retrenchment as the workman was the junior most. Incidentally Shri K. V. Nadkarni who was their Labour Advisor advised them to resort to the latter option of retrenchment and on his advice the order of retrenchment offering legal compensation was issued. Incidentally, Shri Nadkarni who is practising independently has appeared for the retrenched workman. However, no justification is shown by him for not examining the workman on oath in this case. Ultimately, the Tribunal has to understand the grievances of the person who has raised the industrial dispute. In the given circumstances the order of retrenchment seems to be just and proper. I therefore answer the above issue accordingly and pass the following order:

ORDER

It is hereby held that the action of the management of M/s Goa Bottling Co., Pvt. Ltd., Margao, in retrenching the services of Shri Pradeep Sardesai, Clerk, w.e.f. 16-5-78 is legal and justified. Consequently, the workman is not entitled to any relief in this case. As obiter it is stated that the amount of compensation of Rs. 2,080.76 be paid to the workman by the management if not already paid.

There is no order as to costs.

Inform the Govt. accordingly about the passing of the award.

S. V. Nevañi
Presiding Officer
Industrial Tribunal

Department of Inland Water Transport

Order

No. 7/3/89-ILD

On the recommendation of Departmental Promotion Committee Shri Benecio D'Souza Eremita, Workshop Supdt. in River Navigation Department (Marine Workshop), Panaji is hereby promoted to the post of Senior Workshop Supdt. in Marine Workshop, Betim in the pay scale of Rs. 3000-100-3500-125-4500, on ad-hoc basis with immediate effect, for a period of one year or till the post is filled on regular basis whichever is earlier.

This promotion will not bestow any claim for regular appointment and the service rendered on ad-hoc basis in the grade shall not count for the purpose of seniority in the grade.

By order and in the name of Governor of Goa.

L. J. Menezes Pais, Under Secretary (Inland Water Transport).

Panaji, 24th May, 1989.